IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10236 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAUDHARY SHIVRAMBHAI SHEKHAR - Petitioner

Versus

COMMANDANT & 1 - Respondents

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Appearance :
MR PRAKASH K JANI for Petitioner,
MR BIPIN BHATT for Respondents,
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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 15/02/2006

ORAL JUDGMENT

1. The petitioner has preferred this petition under Article 226 of the Constitution of India challenging the order dated 5.5.1995, imposing penalty of dismissal from services upon the petitioner issued by the Commandant, CRPF for the reasons recorded therein.

2.Brief facts deserves to be set out as under:

2.1 The petitioner was appointed as a Constable in the Central Reserve Police Force (hereinafter referred to as “CRPF” for short) on 27.7.1985. After his appointment, as Constable in CRPF, the petitioner has served at various places like Nagpur, Delhi, Kapurtala etc.

2.2 The petitioner has averred in the memo of petition that in the year 1994, when he was posted at Delhi, one constable of the same company started harassing him. The harassment of said constable namely Shri J. Ahmed had become unbearable. He made complaint to his superiors but without any avail. The petitioner has stated in the memo of petition that Shri J. Ahmed assaulted him and injured him seriously on receiving information that the petitioner had made complaint against him. The petitioner, thus, was under constant

shock and terror serve in the CRPF. Due to this constant harassment, the petitioner had no other choice but to leave the Company and Battalion of the CRPF. He had to abruptly leave the service. He had to take shelter at Mehsana in Gujarat. The petitioner submits that thereafter, he received a memorandum on 23.1.1995 informing him that the inquiry is being held against him for remaining absent. Copy of the memorandum dated 23.1.1995 is produced at Annexure – A to the petition. The petitioner has stated that again on 31.1.1995, he was served with an office order from the Commandant 125, BN CRPF stating that an inquiry under Section 11(1) of the CRPF Act, 1949 with Rule 27 of the CRPF Rules 1955 was being held against the petitioner and for that purpose, one Shri N.K.Nath was appointed as an Inquiry Officer. The communication dated 31.1.1995 is annexed at Annexure – B to the memo of petition. The petitioner has submitted that on 18.4.1995, the Inquiry Officer Shri N.K.Nath has submitted his inquiry report. Copy thereof was forwarded to the petitioner, which is annexed at Annexure – C to the memo of petition. The report of the Inquiry Officer dated 18.4.1995 contains that the charges levelled against the petitioner have been proved. The petitioner

thereafter, received impugned order dated 5.5.1995, which is at Annexure – D to the memo of petition. The petitioner has challenged the said impugned order dated 5.5.1995 by way of Special Civil Application under Article 226 of the Constitution of India.

3. Shri P.K.Jani, learned advocate for the petitioner has submitted that the petitioner has been serving with utmost sincerity and his service record, upto his leaving the CRPF, was unblemished. Shri Jani has submitted that the petitioner was responsible in discharging important duties and he was doing well at Punjab Kapurtala and in the Prime Minister Squad, the petitioner ought not to have been treated in this way, by the respondents. The petitioner has not been charged with any serious misconduct but only that of remaining absent. Shri Jani, however, has not denied the fact that respondent has declared the petitioner “deserter” in accordance with Rule 31(c) of the CRPF Rules, 1955 as he had not reported for duty for 60 days consecutively. This order of 31.12.1994 for declaring him as 'deserter' remained unchallenged. Shri Jani has submitted that petitioner had no other option but to leave the force due to harassment become unbearable to the petitioner.

4.Shri Jani, learned advocate for the petitioner has further submitted that the penalty imposed is that of dismissal from service, which amounts to pronouncing and imposing sentence of 'economic death', not only to the petitioner but also to his family members. This penalty is disproportionate and therefore, same ought not to have been imposed upon the petitioner. Shri Jani has relied upon the ruling of the Apex Court in case of **UNION OF INDIA VS. GIRIRAJ SHARMA**, reported in 1994 Supp (3) Supreme Court Cases p.755, in support of his submission that when the misconduct is that of overstaying of leave, the punishment of dismissal was uncalled for and a minor penalty should have been imposed. In view of this, Shri Jani has submitted that in the instant case also, the question was that of remaining absent from duty and therefore, the punishment of dismissal ought not to have been imposed upon the petitioner. Shri Jani has further replied upon the decision of this Court in case of **SARDARSINGH DEVISINGH VS. THE DISTRICT SUPERINTENDENT OF POLICE SABARKANTHA DISTRICT AND OTHERS**, reported in 1985(2) GLR p.1368 and submitted that the penalty of dismissal from service was surely disproportionate to the offence of absenteeism. Shri Jani has also relied upon the

decision of this Court in case of **MANAGING DIRECTOR, GUJARAT WATER RESOURCES DEVELOPMENT CONRPORATION LTD AND ANR. VS. KANAIYALAL AMBALAL SHAH**, reported in 1993(1) GLR p.321, in support of his submission that when there is a question of abandonment of service, there must be very strong evidence of abandoning the service and in the instant case, absenteeism is the cause for abandonment and the same cannot have been believed by the authority without their being any adequate proof thereof.

5. Shri Jani has submitted that in any view of the matter, the punishment of dismissal was disproportionate and therefore, the same ought not to have been imposed upon the petitioner.

6. Shri Bhatt, learned Central Government Counsel appearing on behalf of the respondents has submitted that the petition is misconceived and therefore, petition deserves to be dismissed. Shri Bhatt has also submitted that petitioner has not pointed out any infirmities and lacuna in the procedure of inquiry. The formal averments in respect of non supply of the copies of relevant documents have been taken but it is not shown as to which document had not been supplied. In absence of any cogent point including any fatal

infirmities in the procedure of inquiry, the impugned order cannot be interfered with by this Hon'ble Court under Article 226 of the Constitution of India. Shri Bhatt has also submitted this respondent being a Uniform Force, the desertion of forces on account any lame excuses deserves to be viewed seriously. Shri Bhatt has also submitted that the Inquiry Officer was duly appointed and after sufficient opportunity given to the petitioner, impugned order came to be passed on 5.5.1995. The impugned order is passed thus, after following the due procedure of law, and the same cannot be interfered under Article 226 of the Constitution of India. Shri Bhatt has also invited this court's attention to the averments made in the affidavit in reply filed on behalf of respondent No. 1 and submitted that the impugned order does not suffer from any infirmities whatsoever and therefore, this court may not exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India. Shri Bhatt has also submitted that the petitioner has duly been declared “deserter” and accordingly, the procedure is followed and as there is no infirmities in the procedure of inquiry, the resultant order of dismissal does not call for any interference. Shri Bhatt has also

submitted that the quantum of punishment cannot be said to be disproportionate to the misconduct proved against the delinquent. The delinquent petitioner has failed in pointing out any mitigating circumstances warranting any such lighter punishment than the one of dismissal from service. In absence of any plea on the point of mitigating circumstances, this court may not come to the conclusion that punishment imposed was harsh or disproportionate to the misconduct proved. Shri Bhatt has submitted that this petition is nothing but a chance taking, as the petitioner had deserted the force and thereafter, he had never bothered, either to report for duty or to make any defence whatsoever in response to the inquiry and at the time of issuing chargesheet. In view of this, the petition deserves to be dismissed as the impugned order does not suffer from any infirmities.

7. This court has perused the averments made in the petition, the affidavit in reply filed on behalf of the respondent No. 1 and heard the counsel of the parties at length. The fact deserves to be noted that the petitioner has not made any attempt whatsoever to bring on record any document or evidence to show that he has ever made any complaint to his superior about the

harassment from said Shri J. Ahmed, as stated in the memo of petition. The ground for desertion, does not inspire any confidence and therefore, this court has no hesitation to conclude that the petitioner has deserted the force without there being any legitimate plausible grounds warranting his leaving of the force. The petitioner has also not bothered to report for duties nor did he bother to make any submission in response to the memo of chargesheet, nor did he remain present in the inquiry. The order of authorities passed under Rule 31(c) of the CRPF Rules dated 31.12.1994 has also remained unchallenged. In other words, the petitioner has accepted the same. In view of this, the order impugned cannot be said to be in any way suffer from any infirmities.

8. The reliance placed by Shri Jani in case of **UNION OF INDIA VS. GIRIRAJ SHARMA** (Supra) would be of no avail to the petitioner as in that case, it was a question of overstaying of sanctioned leave, whereas, in the instant case, the misconduct is that of deserting the uniform forces without there being any cogent reason and not reporting for duty and even not answering the charges. In view of this, the observation made by the Apex Court in case of **UNION OF INDIA VS. GIRIRAJ**

SHARMA(Supra) would be of no avail to the petitioner.

9. The observation of the Division Bench in case of **MANAGING DIRECTION, GUJARAT WATER RESOURCES DEVELOPMENT CONRPORATION LTD AND ANR.**(Supra), would also be of no avail to the petitioner, as there is no question of abandonment. The fact in the present case is that the petitioner was declared 'deserter' after following due procedure vide order dated 31.12.1994 and the said order has been accepted by the petitioner as he has not challenged the same and therefore, the reliance placed by the petitioner as the above citation is rather misconceived.

10. On the point that whether the punishment of dismissal is disproportionate or not, Shri Jani has relied upon the decision of this court in case of **SARDARSINGH DEVISINGH** (Supra), wherein also, this court has infact observed that repeated instances of absenteeism deserves to be viewed seriously. In the instant case, as it is seen herein above, the petitioner has miserably failed in producing the documents in his support and not only that, he has not even challenged the order declaring him deserter dated 31.12.1994 and he has evaded the arrest warrant and therefore, the Disciplinary authority had initiated disciplinary

actions against the petitioner and rightly held the petitioner guilty of the misconduct and the observation made by the Supreme Court in case of **UNION OF INDIA AND OTHERS VS. GULAM MOHD. BHAT**, reported in AIR 2005 SC p.4289, would squarely be applicable to the facts and circumstances of the present case. The petitioner has deserted his uniform forces and had not remained present at the time of inquiry, shows lack of sincerity on the part of the petitioner and as the impugned order does not suffer from any infirmities, this court is of the view that the penalty is rightly imposed on the petitioner.

11. Shri Jani has submitted that the contributory Provident Fund of the petitioner may be ordered to be released. This anxiety of Mr. Jani is sufficiently taking care of by the impugned order itself as it is clearly mentioned on page 3 at para 6 of the impugned order that dues, if any outstanding against him, may be recovered or adjusted from the amount payable to him and the Government Treasury, meaning thereby, despite the dismissal order, if any amount was required to be paid to the petitioner, the department must have paid it to him, however, dismissal of this petition would not debar the petitioner from receiving any outstanding

from the department, if legally payable to him.

12. In view of the aforesaid, this petition deserves to be dismissed and is dismissed accordingly with no order as to costs. Rule discharged.

(S.R.BRAHMBHATT, J.)

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